



# The Attorney General of Texas

April 7, 1980

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**Mr. James B. Bond**  
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Open Records Decision No. 238

Re: Whether location of  
registered bee yards is public  
information under Texas Open  
Records Act.

Dear Mr. Bond:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act, as to whether information disclosing the specific location of registered bee yards in a county is excepted from required public disclosure under sections 3(a)(4) or 3(a)(10) of the Act.

The State Entomologist has received a request for information concerning the locations of all registered bee yards in a number of counties. He has the duty of enforcing the state beekeeping law. V.T.C.S. arts. 549-565. His principal activity is conducting a program of inspection for contagious or infectious diseases and control of such diseases. As a part of the program of enforcement a registry of bee yards which contain twenty-five or more colonies of honeybees is maintained. The registry is in the form of county maps with notations as to the specific location of such yards.

You explain that commercial beekeepers often spend considerable time and effort scouting an area to determine the best "bee pastures," and that the most productive locations are determined after years of scouting and experimentation. You state that a beekeeper is not likely to disclose his specific locations to others, because he does not want to give others an advantage by virtue of the scouting he has done, and he would also be concerned about overcrowding in that area which could lead to decreased production.

You are also concerned about the effect that disclosure of locations would have on the State Entomologist's ability to obtain information necessary to carry out his inspection program. Based on his experience with the business, he anticipates substantial noncompliance with the registration requirements of the law if location information is required to be made public. In addition to the possibility of normal competition for choice locations, he states that beekeepers are concerned about the increased risk

of theft of or from the hives. They are normally located in isolated locations in groups of twenty-five or more. The estimated market value of a hive is from \$65 to \$100.

You contend that information concerning the specific location of registered bee hives is excepted from required public disclosure under one or both of the exceptions contained in sections 3(a)(4) or 3(a)(10) of the Act which except:

(4) information which, if released, would give advantage to competitors or bidders;

....

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

With reference to the section 3(a)(10) exception, there is no statutory provision or judicial decision holding that information of the type requested is privileged or confidential. The inquiry then is whether the information is a trade secret. Texas has adopted the definition of "trade secret" contained in the Restatement of Torts, § 757(b) 1939. Hyde Corporation v. Huffines, 314 S.W.2d 763, 776 (Tex. 1958). See Open Records Decision Nos. 184 (1978); 175 (1977); 89 (1975); 50 (1974). That definition provides:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

In addition, the Penal Code, in making theft of a trade secret a third degree felony, defines it as:

... the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

Penal Code § 31.05(a)(4).

The Restatement lists six factors to be considered in determining whether particular information is a trade secret:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort

or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757, comment b (1939).

We have found no judicial decision which has held the type of information at issue here to be a trade secret. However, language in one case indicates that it could be within that category:

A trade secret may be a discovery rather than an invention, and may result from industry or application, or may be merely fortuitous. It may be any secret of a party important to his interest. The means by which the discovery is made may be obvious, and the experimentation leading from known factors to presently unknown results may be simple and lying in the public domain. But these facts do not destroy the value of the discovery and will not advantage a competitor who by unfair means obtains the knowledge without paying the price expended by the discoverer. . . .

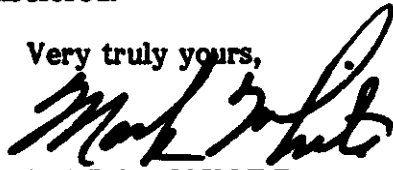
Brown v. Fowler, 316 S.W.2d 111, 114 (Tex. Civ. App. — Fort Worth 1958, writ ref'd n.r.e.). The facts presented here show that the most productive location for a bee yard is discovered by a beekeeper after perhaps years of search and experimentation. This is information which is of value to the beekeeper, and which he does not normally disclose to persons other than employees. The value of the information would be reduced by disclosure to competitors because it could lead to overcrowding and reduced production. We believe that the information is in the nature of a trade secret. On the facts you have presented, we believe there has been a showing of potential harm to the business' competitive position such as that this office has required for application of the section 3(a)(4) exception. Attorney General Opinion H-436 (1974); Open Records Decision Nos. 203, 184 (1978); 173, 170 (1977); 95, 75 (1975); 48, 45 (1974). We note the great similarity of the 3(a)(4) exception to the definition of trade secret.

One factor which the federal courts have considered important in determining whether commercial or financial information obtained from persons is excepted from required public disclosure under an exception similar to our section 3(a)(10) is whether disclosure would have the effect of impairing the government's ability to obtain necessary information in the future. National Parks and Conservation Association v. Morton, 498 F.2d 765, at 770 (D.C. Cir. 1974). In this instance, we believe that your anticipation that required public disclosure of the location of bee yards would result in a significant impairment of the state's ability to obtain voluntary compliance with the registration requirements in the future is a reasonable one, and that the likelihood of this effect supports the withholding of this information.

It is our decision that the information in the registry of registered bee yards maintained by the State Entomologist which discloses the specific location of those bee

yards within a county is excepted from required public disclosure as a trade secret under section 3(a)(10). We do not believe that information as to the names and addresses of those persons who have registered their bee yards in a particular county is within the exception, and this information should be disclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written over the typed name.

MARK WHITE  
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APPROVED:  
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